

K23VCORA

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 438 (VEC)

5 EDWIN CORTORREAL,

6 Defendant.

ARRAIGNMENT

7 -----x

8 New York, N.Y.
9 February 3, 2020
11:57 a.m.

10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 HAGAN C. SCOTTEN

Assistant United States Attorney

18 JEAN BARRETT

19 Attorney for Defendant

20 ALSO PRESENT: FRANCISCO OLIVERO, Interpreter (Spanish)

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1 (Case called)

2 MR. SCOTTEN: Good morning, your Honor.

3 Hagan Scotten, for the government.

4 THE COURT: Good morning.

5 MS. BARRETT: Good morning, your Honor.

6 Jean Barrett, on behalf of Mr. Cortorreal.

7 THE COURT: Good morning --

8 MS. BARRETT: -- who is standing to my right.

9 THE COURT: Good morning, Mr. Cortorreal.

10 THE DEFENDANT: (In English) Good morning, your Honor.

11 THE COURT: Please be seated, everybody.

12 All right. Just to go through some of the --

13 MS. BARRETT: Your Honor? The interpreter has asked
14 me to put on the record that Mr. Cortorreal has requested
15 interpreting only of his words to the Court. He feels he can
16 understand what's going on. It's his ability to convey his
17 thoughts, whatever, to the Court that's the issue.

18 THE COURT: Okay.

19 MS. BARRETT: So he has asked not to use the headsets;
20 and that the interpreter will only interpret what he says to
21 your Honor.

22 THE COURT: Okay. All right.

23 Mr. Cortorreal, let me just confirm, you think that
24 you understand English well enough to proceed without the
25 interpreter interpreting to you?

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1 THE DEFENDANT: (In English) Correct.

2 THE COURT: Okay.

3 All right. Let me just take sure.

4 Mr. Scotten, the indictment has now been unsealed; is
5 that correct?

6 MR. SCOTTEN: It was unsealed about an hour ago, your
7 Honor, yes.

8 THE COURT: Okay. And I was handed a financial
9 affidavit for Mr. Cortorreal.

10 Ms. Caliendo, could you please swear in
11 Mr. Cortorreal.

12 (Defendant sworn)

13 THE DEPUTY CLERK: Please state your full name for the
14 record and spell your last name.

15 THE DEFENDANT: Edwin Cortorreal.

16 THE COURT: How do you spell your last name?

17 THE DEFENDANT: (In English) C-O-R-R-R-E-A-L.

18 THE COURT: Okay. Thanks.

19 Mr. Cortorreal, you filled out a financial affidavit
20 today. You told me in this affidavit that you are not
21 currently employed, that you're not married, and that you don't
22 have -- have not had any income at all in the past 12 months.

23 Is that true?

24 THE DEFENDANT: (In English) Correct.

25 THE COURT: And also that you don't own any property

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1 of any type; is that correct?

2 THE DEFENDANT: (In English) Correct.

3 THE COURT: All right. Ms. Barrett, you're going to
4 be appointed under the CJA Act.

5 MS. BARRETT: Thank you, your Honor.

6 THE COURT: Okay. I know from the fact that I was
7 told that we were late so that the indictment could be read to
8 Mr. Cortorreal, that the indictment has been read to him.

9 Is that correct, Mr. Cortorreal? Did someone read you
10 the indictment?

11 THE DEFENDANT: (In English) Correct.

12 THE COURT: They read it to you in Spanish?

13 THE DEFENDANT: (In English) Yes.

14 THE COURT: You want me to read it again out loud?

15 THE DEFENDANT: (In English) No.

16 THE COURT: All right.

17 You're charged with a racketeering conspiracy, murder
18 in aid of racketeering, using a firearm that resulted in death,
19 and using a firearm in connection with a crime of violence
20 other than the murder.

21 Do you understand what you're being charged with?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: How do you plead, guilty or not guilty?

24 THE DEFENDANT: (In English) Not guilty.

25 THE COURT: Mr. Scotten, do I also understand that the

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1 death penalty is no longer on the table because that was
2 forgone in order to get him extradited?

3 MR. SCOTTEN: That's correct. So essentially, your
4 Honor, that whole process was done once he was indicted, while
5 the indictment was still under seal, and the government will
6 not be seeking the death penalty in this case.

7 THE COURT: Okay. Can you describe for me and for
8 Mr. Cortorreal what the case against him is, and also what the
9 discovery looks like in this case.

10 MR. SCOTTEN: Yes, your Honor.

11 So this is a case arising from Mr. Cortorreal's
12 association with a group known as the Hot Boys.

13 The indictment charges beginning in 2006; I think
14 Mr. Cortorreal's association is earlier than that. At the time
15 Mr. Cortorreal was most actively involved with them, they were
16 burglars and robbers. They conducted both commercial
17 burglaries and burglaries of homes.

18 THE COURT: Are these the guys that pushed open the
19 doors with the hydraulic pump?

20 MR. SCOTTEN: Yes. So let me do this for your Honor.
21 I was doing the whole thing from anew, since Mr. Cortorreal;
22 but, to be clear, this is the same case. He's the sealed
23 defendant.

24 THE COURT: I knew he was the sealed defendant. But I
25 just want to make sure that I had the right gang case.

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1 MR. SCOTTEN: Yes. Correct. That is exactly right.

2 The focus of Mr. Cortorreal's activity was in the
3 period of 2005 and 2007, most significantly in 2006. He and
4 four other members of the enterprise decided to rob Kelly Diaz,
5 who was a wholesale marijuana supplier, a robbery they
6 committed with that pump your Honor was just referring to.

7 In the course of that robbery, after Mr. Diaz was
8 subdued, and indeed after the robbery was largely complete,
9 Mr. Cortorreal personally shot and killed Diaz. That's the
10 same murder your Honor has dealt with with respect to certain
11 other defendants who are aiders and abettors.

12 THE COURT: I recall.

13 MR. SCOTTEN: Just to bring Mr. Cortorreal, sort of,
14 to the present, in 2007, he was caught in a DEA sting, wherein
15 he planned to rob what he believed to be a truck containing
16 many kilograms of heroin with other members of the Hot Boys.
17 It was not, in fact, that. He and Edwin Araujo, your Honor may
18 remember from the original case, successfully fled the scene at
19 high speed.

20 Although Araujo was arrested shortly thereafter, Mr.
21 Cortorreal was at large for something like a year. And I
22 believe he was eventually apprehended in Pennsylvania in 2008.
23 He eventually pled guilty to a narcotics charge, since the
24 intended object of the robbery was narcotics. And he was
25 sentenced to six years in prison.

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1 However, in 2011 he was given early parole, not
2 really, as part of being extradited. New York said, Why should
3 we keep him here since he's going to be extradited to the DR,
4 to the Dominican Republic, where he's remained until now.

5 So those are some of the facts behind the case.

6 In terms of discovery -- and I just begin to discuss
7 this with Ms. Barrett -- as your Honor may recall, there's a
8 huge amount of discovery because it was a sprawling enterprise.
9 And Ms. Barrett has quite reasonably asked for all of it. At
10 the same time I will try to indicate to her which parts concern
11 acts that her defendant did not particularly participate in,
12 but she does want to review all of it, and that's reasonable.

13 So the discovery of most concern to Mr. Cortorreal
14 includes video of the defendant coming and going to -- or going
15 to and coming from the apartment where the murder occurred.

16 DNA, which will require further processing -- we are
17 aware from COTUS that DNA found on a cell phone battery at the
18 scene of the murder matches the defendant's; but we will
19 request a warrant and actually get a swab so that we can firm
20 that. So that discovery will be forthcoming as OCME conducts
21 its analysis.

22 There are phone records relative both to that
23 particular murder and the conspiracy more generally. There is
24 also prior convictions. We expect that we would use, for
25 example, the 2007 sting to prove the enterprise and

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1 Mr. Cortorreal's participation in it.

2 Then there is a whole lot of other discovery for a
3 whole lot of robberies and burglaries, particularly burglaries
4 of pharmacies for which the objective, sort of, scientific
5 discovery is bulky, most of which occurred while Mr. Cortorreal
6 had been extradited. So we'll make that available to defense
7 counsel. It is further proof of the enterprise. It may also,
8 in fact, be *Giglio* for some witnesses who end up testifying
9 against Mr. Cortorreal, but it is less central to
10 Mr. Cortorreal.

11 THE COURT: Okay. And am I remembering correctly that
12 there was a discovery coordinator in this case?

13 MR. SCOTTEN: There was. Ms. Greenwood is the
14 coordinator. And she -- I think she believes she can continue
15 under the Court's order, so long as the Court clarifies today
16 that you intend that order to continue to apply. This is the
17 same docket, so I think it normally would.

18 THE COURT: Okay. I intend it to continue.

19 MR. SCOTTEN: Thank you, your Honor.

20 THE COURT: Does she need to give you -- does the
21 defense need to give you a hard drive?

22 MR. SCOTTEN: So because there's a discovery
23 coordinator, actually, no. I think Ms. Greenwood will provide
24 hard drives to the defense.

25 THE COURT: Perfect.

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1 MR. SCOTTEN: Probably we will end up having to talk
2 about getting some hard drives into jail, but we'll do that a
3 little further along.

4 THE COURT: Okay. But let's do that quickly, because
5 it's going to need to happen, and that tends to slow things
6 down.

7 MR. SCOTTEN: I'll prepare what I think is -- we just
8 couldn't put all the discovery in the jail. So I usually like
9 to know what defense counsel wants her client to have; but I
10 have an idea, so we'll start putting that together.

11 THE COURT: Perfect.

12 Okay. Ms. Barrett.

13 MS. BARRETT: Yes, your Honor.

14 With regard to the discovery, in view of the fact that
15 Mr. Cortorreal has difficulty in reading English, I'm going to
16 have to translate it one way or another, translate anything
17 that's in English one way or another.

18 Obviously if there are tape-recordings and people are
19 communicating in Spanish, that doesn't have to be translated
20 for them, but it would have to be translated for me if the
21 government has not already done that. So that certainly would
22 be a concern in terms of timetable.

23 And obviously this is a very serious offense.
24 Mr. Scotten and I had a discussion with regard to the taking of
25 a DNA sample. I requested a copy of the affidavit in advance

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1 of the execution of the search warrant. He has declined to
2 provide it. This is not an ordinary search warrant in terms
3 of -- and I don't anticipate, based on his representations
4 today, that there would be any difficulty in it; but I also
5 don't see that the government would be prejudiced by allowing
6 me to review it prior to advising my client to participate in
7 the procedure. If the procedure is limited to the taking of a
8 swab, and there is already a COTUS identification with regard
9 to Mr. Cortorreal, it doesn't seem to be that controversial a
10 question. But given the fact that this isn't a search of one
11 person, as opposed to a search of a home or a car, I would
12 request the opportunity to view the affidavit so that I might
13 consider whether or not to move to quash -- to quash the search
14 warrant.

15 MR. SCOTTEN: To be clear --

16 THE COURT: Mr. Scotten.

17 MR. SCOTTEN: There is no search warrant.

18 THE COURT: I didn't think there was.

19 MR. SCOTTEN: We'll need to do an order to get the
20 sample, because as your Honor knows, we're not going to proceed
21 just on a COTUS hit. I am aware of no -- I've never seen an
22 affidavit given to defense counsel before execution of a
23 warrant. I suspect this is an opportunity for her to get
24 discovery and try to learn something about the government's
25 case.

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1 But if we think we can do it with no prejudice, either
2 in this case or in the future, we'll consider it. If we don't
3 do it, she can move to quash without it.

4 THE COURT: Move to quash after the sample is taken.

5 MR. SCOTTEN: Yes, your Honor.

6 THE COURT: Okay.

7 MS. BARRETT: Your Honor, I believe that an in-person
8 search -- and I did -- I have litigated this issue in another
9 district. So I believe that an in-person search is considered
10 very different from the search of property; and that I should
11 have an opportunity to move to quash prior to the execution of
12 the warrant, where my client is required to provide -- to allow
13 somebody to swab his mouth.

14 THE COURT: There may be law that says that. I'm not
15 aware of it. He doesn't have a warrant yet; so all of this is
16 going to -- he needs to get a warrant. He'll let you know when
17 he has the warrant; he'll give you a copy of the warrant. If
18 at that point if he's still saying he's not going to show you
19 the affidavit, and you think you've got law that justifies a
20 motion to quash, you know how to make a motion.

21 MS. BARRETT: I do.

22 THE COURT: I know how to rule on a motion.

23 MS. BARRETT: I know.

24 THE COURT: We can deal with it at that point.

25 MS. BARRETT: Yes, your Honor. Thank you.

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1 THE COURT: I was just going to ask if you would waive
2 all of that and just agree to let him give the sample.

3 MR. SCOTTEN: Well, that's where we started, your
4 Honor. The answer is no.

5 THE COURT: Okay. That's fine.

6 All right. So all of this is a long-winded way of
7 saying, Ms. Barrett, I'm fully prepared to give you a nice
8 chunk of time before I bring you back for a status conference
9 where we will set a motions calendar and a trial date.

10 MS. BARRETT: Understood.

11 THE COURT: Given what you know about the case, how
12 long would you like?

13 MS. BARRETT: Your Honor, I just read the indictment,
14 and I have no idea how much discovery there is.

15 THE COURT: Well, you've heard what Mr. Scotten said.

16 There's videos, there's lab reports, there's police
17 reports from lots -- as I recall, lots of burglaries. There
18 were lots of pharmacy burglaries, weren't there?

19 MR. SCOTTEN: That's correct.

20 Your Honor will remember, and this may be helpful to
21 Ms. Barrett, that the government came into this case, sort of,
22 backwards, based on some really amazing investigation by the
23 detectives sitting back there. They proved the pharmacy
24 burglaries essentially solely by looking at 200 sets of cell
25 phone towers. So there's just a vast amount of cell phone

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1 evidence that they needed just to identify the pharmacy
2 burglaries, for committing these burglaries from roughly 2011
3 to 2013, which is to say --

4 THE COURT: After his time.

5 MR. SCOTTEN: -- while Mr. Cortorreal was either in
6 prison or in the Dominican Republic. But we will disclose
7 that. Some of the same characters who were involved in this
8 robbery were there.

9 THE COURT: And also that case was tried in front of
10 Judge Carter.

11 MR. SCOTTEN: That case was largely pled and partly
12 tried.

13 THE COURT: And Judge Pauley, right? There's a piece
14 of it that's in front of Pauley?

15 MR. SCOTTEN: Sure.

16 So let me give the full narration --

17 MS. BARRETT: I'll sit down.

18 MR. SCOTTEN: I'll try to be somewhat brief.

19 So the pharmacy burglaries case was indicted in 2013,
20 and was before Judge Pauley. Almost everyone pled guilty in
21 that case, except one defendant, who went to -- I just said
22 Pauley. Judge Carter.

23 THE COURT: Right.

24 MR. SCOTTEN: Judge Carter. That case took a long
25 time to progress because we actually indicted multiple rounds

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1 of defendants as we gained more proof. And that progressed
2 from 2013 to roughly 2017. In 2017, one of the very last
3 defendants in that case went to trial before Judge Carter and
4 was acquitted. Everyone else had pled guilty before then.

5 That same year is when this case was indicted before
6 your Honor. But before that we indicted a subset of the
7 participants in the pharmacy burglaries conspiracy for a very
8 specific home invasion robbery that occurred in 2012. That
9 case was indicted before Judge Pauley. One defendant in that
10 case went to trial and was convicted.

11 That case may be of interest to Ms. Barrett and
12 Mr. Cortorreal, because actually some of the same participants
13 as in the murder here -- or at least the relevant players --
14 were relevant in that home invasion.

15 Then we indicted everything as a racketeering case
16 before your Honor. Each of these cases has some different
17 defendants and a common core of defendants.

18 And that is where we are today, your Honor.

19 THE COURT: Okay.

20 MS. BARRETT: I won't bother the Court. I assume that
21 I'll be provided with the docket numbers by the government, so
22 that will be helpful.

23 THE COURT: Okay.

24 So how long do you want is the question.

25 MS. BARRETT: Your Honor, I would like at least 90

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1 days.

2 THE COURT: Okay. I was going to give you four
3 months.

4 MS. BARRETT: That's good. I'll take longer.

5 THE COURT: Is that better?

6 MS. BARRETT: Yes.

7 THE COURT: All right.

8 So we'll do a status conference in four months; that
9 will be June the 2nd at 2:30. At that time we'll set a motions
10 calendar and set a trial date.

11 I'm excluding time between now and June the 2nd on the
12 grounds of the complexity of the case; the defense needs time
13 to review all of this stuff, which is -- there's a lot of it,
14 in order to make an intelligent decision about her defense, the
15 defendant's defense; and also about what motions are going to
16 be made. Because of that, I find that the defendant's interest
17 in time to do so outweighs the public's interest in a speedy
18 trial.

19 MS. BARRETT: No objection, your Honor.

20 THE COURT: Anything further from the government?

21 MR. SCOTTEN: Yes. If I might, your Honor, I need to
22 make a brief record on some things that would normally happen
23 in magistrate court.

24 THE COURT: Okay.

25 MR. SCOTTEN: The defendant passed into U.S. custody

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1 in the Dominican Republic on Friday, January 31st. He arrived
2 in the United States at approximately 5:30 p.m., also on
3 January 31st.

4 At that time he spoke by phone with Marissa Cabrera of
5 the Federal Defenders. The Federal Defenders typically handle
6 Saturday presentments, if they are to occur. CJA counsel do
7 not have to come in on a Saturday.

8 THE COURT: Right.

9 MR. SCOTTEN: Speaking with Ms. Cabrera,
10 Mr. Cortorreal waived his right to speedy presentment,
11 presentment within 24 hours; so there was no appearance on
12 Saturday. And today, by the defendant's consent, is his first
13 appearance before a judicial officer.

14 THE COURT: Okay. That also means that there's been
15 no detention hearing.

16 MR. SCOTTEN: That is correct, your Honor. So if he
17 wishes to make an application for bail, we are seeking
18 detention.

19 THE COURT: Okay. The government is seeking
20 detention. This is a presumption case.

21 Are you seeking bail?

22 MS. BARRETT: Not at this time, your Honor.

23 THE COURT: Okay. If you change your mind and decide
24 to seek bail, you know how to do that as well.

25 MS. BARRETT: I do.

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1 THE COURT: So I'm ordering the defendant detained
2 pending trial at this point.

3 Anything else?

4 MR. SCOTTEN: No. Thank you, your Honor.

5 THE COURT: Anything, Ms. Barrett?

6 MS. BARRETT: No, your Honor.

7 THE COURT: All right. Thank you, all.

8 MS. BARRETT: Thank you.

9 * * *